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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,688	02/02/2004	Dexter Lehman	14361/139DIV	9907

23595 7590 11/15/2006  
NIKOLAI & MERSEREAU, P.A.  
900 SECOND AVENUE SOUTH  
SUITE 820  
MINNEAPOLIS, MN 55402

EXAMINER
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TILL, TERRENCE R

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/770,688	LEHMAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Terrence R. Till	1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-14 and 21 is/are rejected.
- 7) ☒ Claim(s) 15-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/2/04</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Priority***

1. This application discloses and claims only subject matter disclosed in prior Application No. 09/982,124, filed 10/17/01, and names an inventor or inventors named in the prior application. Accordingly, this application may constitute a continuation as it does not appear that the subject matter presented in this application differs significantly from the subject matter presented in the earlier application. Should applicant desire to obtain the benefit of the filing date of the prior application, attention is directed to 35 U.S.C. 120 and 37 CFR 1.78.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 11 depends on claim 10 and recites the identical subject matter. Therefore claim 11 fails to further limit the preceding claim.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 2, 12 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 12 of U.S. Patent No. 6,684,452.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1 and 12 of the '452 patent discloses all the claimed subject matter presented in present claims 2 and 12 of the application. The only difference in language between claim 2 of the present application and claim 1 of the patent is that claim 2 of the present application says the solution is selectively dispensed in a first cleaning mode and a second cleaning mode, rather than a high solution flow rate and a low solution flow rate. The only difference between claim 12 of the '452 patent and claim 12 of the present application is that claim 12 of the present application recites the high solution flow rate is greater than the low solution flow rate. This is considered inherent in the use of the terms "high" and "low". The limitations of claim 13 of the present application are considered to be recited in the first paragraph of the '452 patent. Since claims 2 and 12 of the present application are broader in scope than patented claims 1 and 12, claims 1 and 12 therefore fully encompasses the claimed subject matter of claims 2, 12 and 13 of the present application.

7. Claims 3-11, 14 and 21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-10 and 12 of U.S. Patent No. 6,684,452 in view of Schaeffer (US 3,402,420). Claim 12 of the '452 patent discloses all the

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limitations of claims 12 and 13 with exception of the method step of rotating a cylindrical brush about an axis parallel to and spaced from the carpeted surface. The patent to Schaeffer discloses a carpet cleaning machine having a cylindrical brush 10 rotatable about an axis parallel to and spaced from the carpeted surface. Therefore it would have been obvious to a person skilled in the art at the time the invention was made to provide claim 12 of the '452 patent with the method step of rotating a cylindrical brush about an axis parallel to and spaced from the carpeted surface, as such is well known in the art to agitate a carpet with a cylindrical roller. Claims 3-11 and 21 correspond to claims 3-10 of the '452 patent.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaeffer (US 3,402,420) in view of Colt et al. (US 3,831,223).

12. The patent to Schaeffer discloses a chassis 33 movably supported on a carpeted surface, a cylindrical brush 10 rotatable about an axis parallel to and spaced from the carpeted surface carried by the chassis, a clean solution tank 100, a dirty solution tank 128, and means for picking up solution 78 off the carpet. Schaeffer does not disclose cleaning solution dispensed in a first cleaning mode and a second cleaning mode. The patent to Colt discloses a carpet cleaner having a valve 38 for dispensing solution in a first cleaning mode (first high flow rate) and a second cleaning mode (low flow rate). Therefore it would have been obvious to a person skilled in the art at the time the invention was made to provide Schaeffer with the cleaning solution being selectively dispensed in a first cleaning mode and a second cleaning mode in view of the teaching of Colt in order to adjust the rate of cleaning solution in response to small pile height carpets and/or slightly soiled rugs (see column 9, lines 10-20).

***Allowable Subject Matter***

13. Claims 15-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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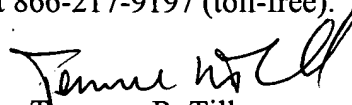
*Conclusion*

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Kasper et al. discloses a carpet extractor that can adjust the dispensing of cleaning solution.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrence R. Till whose telephone number is (571) 272-1280. The examiner can normally be reached on Mon. through Thurs. and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys P. Corcoran can be reached on (571) 272-1214. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Terrence R. Till  
Primary Examiner  
Art Unit 1744

trt